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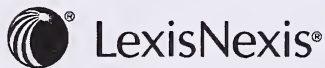
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TITLE 4

BUSINESS AND COMMERCIAL LAW

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ALR. Construction and Application of
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4-46-202. Formation of partnership.

CASE NOTES

Joint Venture.

Grain, collateral for a creditor's loan, belonged to debtors' estate and not the debtors' joint venture because the joint venture was not a separate legal entity. There was no evidence the joint venture was registered as a separate entity with Secretary of State's office, and there was

no evidence the joint venture created separate balance sheets or inventories. *Rice v. Carlton Farms, LLC (In re Webb)*, 474 B.R. 891 (Bankr. E.D. Ark. 2012), *aff'd*, *Bank of Eng. v. Rice*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 14531 (E.D. Ark. Feb. 4, 2013).

CHAPTER 47

UNIFORM LIMITED PARTNERSHIP ACT (2001)

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-47-107. Supplemental principles of law
— Rate of interest.

4-47-107. Supplemental principles of law — Rate of interest.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

History. Acts 2007, No. 15, § 1; 2013, No. 1124, § 1.

Amendments. The 2013 amendment deleted (b).

SUBTITLE 5. CONTRACTS, NOTES, AND OTHER COMMERCIAL INSTRUMENTS

CHAPTER 57

INTEREST AND USURY

SECTION.

4-57-101. Calculation of interest.
4-57-102. Reservation or discounting of
interest permitted.

SECTION.

4-57-104. Maximum rate of interest permitted.
4-57-108. [Repealed.]

4-57-101. Calculation of interest.

(a) Whenever in any statute, deed, written or verbal contract, or in any public or private instrument whatever, any certain interest is or may be mentioned, and no period of time is stated for the rate of interest

to be calculated, interest shall be calculated at the rate mentioned by the year, in the same manner as if the words “per annum” or “by the year” had been added to the rate.

(b)(1) For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty (30) days.

(2) Interest for any number of days less than a month shall be estimated by the proportion which the number of days shall bear to thirty (30).

(c)(1)(A)(i) In calculating interest for a partial payment that is made on a consumer loan, the interest shall be calculated to the time when the partial payment was made, and the partial payment shall first be applied to the payment of the interest.

(ii) If the partial payment exceeds the interest due on a consumer loan, the balance of the partial payment shall be applied to reduce the principal of the debt.

(B) The method for calculating interest and applying payments under subdivision (c)(1)(A) of this section shall apply to all subsequent payments.

(2) Interest shall not be added to the principal balance of a consumer loan if a payment falls short of paying the interest due.

(3) Subdivisions (c)(1) and (2) of this section do not apply to commercial credit, including without limitation commercial real estate financing transactions.

(4) As used in this subsection, “consumer loan” means an extension of credit for personal, family, or household purposes but does not include credit card debt, open account debt, or installment loans.

(d) The rate of interest under a contract in which a rate of interest is not specified is six percent (6%) per annum.

History. Rev. Stat., ch. 80, §§ 10-12; C. & M. Dig., §§ 7357-7359; Pope’s Dig., §§ 9396-9398; A.S.A. 1947, §§ 68-605 — 68-607; Acts 2013, No. 1214, § 1; 2013, No. 1223, § 1.

Amendments. The 2013 amendment by No. 1214 rewrote subsection (c).

The 2013 amendment by No. 1223 added subsection (d).

4-57-102. Reservation or discounting of interest permitted.

It is lawful for a party to loan money in this state by reserving or discounting interest upon commercial paper, mortgages, or other securities for any period authorized by a rule or regulation of the Federal Housing Administration or its successor or for a period of at least thirty-six (36) months, whichever is greater, at any rate of interest agreed upon by the parties not to exceed the applicable rate of interest, if any, prescribed by Arkansas Constitution, Amendment 89, whether the papers or securities for principal or interest are payable in this state, or in any other state, territory, kingdom, or country.

History. Acts 1868, No. 9, § 7, p. 32; 1875, No. 56, § 5, p. 145; 1895, No. 150, § 1, p. 235; C. & M. Dig., § 7355; Pope’s Dig., § 9394; Acts 1953, No. 330, § 1;

1961, No. 71, § 1; A.S.A. 1947, § 68-604; Acts 2013, No. 1124, § 2.

Amendments. The 2013 amendment substituted “is” for “shall be,” “a party to loan” for “all parties loaning,” “by reserving or discounting” for “to reserve or dis-

count,” and “Amendment 89” for “Article 19, § 13”; deleted “any” following “interest upon”; deleted “the rate of interest” following “by the parties”; and inserted “of interest, if any” and “in” following “in this state, or.”

4-57-104. Maximum rate of interest permitted.

The parties to a contract may agree in writing to the payment of interest not exceeding the applicable rate of interest, if any, set forth in the Arkansas Constitution by Amendment 89 on money due or to become due.

History. Acts 1875, No. 56, § 1, p. 145; C. & M. Dig., § 7353; Pope’s Dig., § 9392; A.S.A. 1947, § 68-602; Acts 2013, No. 1124, § 3.

Amendments. The 2013 amendment

deleted “whether the contract is under seal or not” preceding “may agree”; inserted “of interest, if any”; and substituted “by Amendment 89” for “Article 19, § 13.”

4-57-108. [Repealed.]

Publisher’s Notes. This section, concerning usurious consumer loans or credit sales and award of attorney’s fees, was

repealed by Acts 2013, No. 1124, § 4. This section was derived from Acts 1985, No. 245, § 1; A.S.A. 1947, § 68-614.

CHAPTER 58

ASSIGNMENTS

4-58-105. Completion of assignments — Rights and remedies of debtor and subsequent assignees.

CASE NOTES

Relationship to Other Laws.

Subdivision (b)(2) of this section simply prescribed the legal effect when a party to an assigned account in good faith paid the assignor rather than the unknown assignee; the mere use of the word “trustee,” when viewed in the context of the statute as a whole, did not reflect a legislative intent to create the kind of express or technical trust required in the strict and narrow sense under 11 U.S.C.S. § 523(a)(4)(proposed legislation), and therefore, the \$65,000 debt was not non-dischargeable under 11 U.S.C.S. § 523(a)(4). *Arvest Mortg. Co. v. Nail* (In re Nail), 680 F.3d 1036 (8th Cir. 2012).

Assignment provision in the mortgage documents merely served as a collection device for miscellaneous proceeds (funds owned by debtor that she was contractually obligated to remit to the mortgage company); thus, even if the settlement proceeds from the builder were miscellaneous proceeds, debtor’s alleged failure to comply with the assignment provision was a dischargeable breach of contract, not a nondischargeable embezzlement. *Arvest Mortg. Co. v. Nail* (In re Nail), 680 F.3d 1036 (8th Cir. 2012).

CHAPTER 59

FRAUD

SUBCHAPTER 1 — STATUTE OF FRAUDS

4-59-101. Contracts, agreements, or promises required to be in writing.

CASE NOTES

Contracts Not Performed Within Year.

Verbal agreement between the parties was enforceable because Arkansas courts recognized lease agreements between a landlord and tenant that were not in writ-

ing, and a month-to-month lease was not subject to the one-year provision of the statute of frauds. *Ferrell v. Ferrell* (in re *Ferrell*), — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 154679 (W.D. Ark. Oct. 29, 2012).

SUBCHAPTER 2 — FRAUDULENT TRANSFERS

4-59-204. Transfers fraudulent as to present and future creditors.

RESEARCH REFERENCES

ALR. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

CASE NOTES

Bankruptcy Proceedings.

Chapter 7 debtor was not entitled to a homestead exemption under Ark. Const. Art. IX, § 3 on a house she owned because she committed fraud, in violation of this section and § 4-59-205, when she transferred money out of a trust she managed and used the money to buy the house while the trust was indebted to a bank,

and because the debtor was not entitled to a homestead exemption in the house, the bank's judgment lien on the house did not impair the debtor's interest in the house and the debtor's claim seeking an order avoiding the bank's lien under 11 U.S.C.S. § 522(f) had to be denied. In re *Gaddy*, — B.R. —, 2013 Bankr. LEXIS 2326 (Bankr. W.D. Ark. June 7, 2013).

4-59-205. Transfers fraudulent as to present creditors.

RESEARCH REFERENCES

ALR. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

CASE NOTES

Bankruptcy.

Chapter 7 debtor was not entitled to a homestead exemption under Ark. Const. Art. IX, § 3 on a house she owned because

she committed fraud, in violation of § 4-59-204 and this section, when she transferred money out of a trust she managed and used the money to buy the house

while the trust was indebted to a bank, and because the debtor was not entitled to a homestead exemption in the house, the bank's judgment lien on the house did not impair the debtor's interest in the house

and the debtor's claim seeking an order avoiding the bank's lien under 11 U.S.C.S. § 522(f) had to be denied. In re Gaddy, — B.R. —, 2013 Bankr. LEXIS 2326 (Bankr. W.D. Ark. June 7, 2013).

SUBTITLE 6. BUSINESS PRACTICES

CHAPTER 71

TRADEMARKS AND LABELS

SUBCHAPTER 2 — REGISTRATION AND PROTECTION

4-71-209. Cancellation.

RESEARCH REFERENCES

ALR. Application of Defense of Laches in Action to Cancel Trademark. 64 A.L.R. Fed. 2d 255.

4-71-212. Infringement.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

CHAPTER 75

UNFAIR PRACTICES

SUBCHAPTER.

2. UNFAIR PRACTICES ACT.

7. UNFAIR CIGARETTE SALES ACT.

SUBCHAPTER 2 — UNFAIR PRACTICES ACT

SECTION.

4-75-211. Remedies — Witnesses and documents — Immunity.

4-75-211. Remedies — Witnesses and documents — Immunity.

(a) Any person, firm, private corporation, or municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this subchapter and, if injured thereby, for the recovery of damages.

(b)(1) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this subchapter, it shall enjoin the defendant from a continuance thereof.

(2) It shall not be necessary that actual damages to the plaintiff be alleged or proved.

(3) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant three (3) times the amount of the actual damages, if any, sustained.

(c)(1) Any defendant in an action brought under the provisions of this section or any witness desired by the state may be required to testify under § 16-43-211 and as otherwise provided by law.

(2) In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

(3) However, no information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of §§ 4-75-204 and 4-75-207 — 4-75-210.

(d) The remedies prescribed in this subchapter are cumulative and in addition to the remedies prescribed in the Public Utilities Act, § 23-1-101 et seq., for discrimination by public utilities. If any conflict shall arise between this subchapter and the Public Utilities Act, § 23-1-101 et seq., the latter shall prevail.

History. Acts 1937, No. 253, §§ 10, 12; Pope's Dig., §§ 14320, 14322; A.S.A. 1947, §§ 70-310, 70-312; Acts 2013, No. 1148, § 2.

Amendments. The 2013 amendment substituted “§ 16-43-211 and as otherwise provided by law” for “the provisions of § 16-43-701” in (c)(1).

SUBCHAPTER 7 — UNFAIR CIGARETTE SALES ACT

SECTION.

4-75-714. Enforcement Agents — Selec-

tion — Qualifications — Authority.

4-75-714. Enforcement Agents — Selection — Qualifications — Authority.

(a) Arkansas Tobacco Control is designated as a law enforcement agency.

(b) The Director of Arkansas Tobacco Control shall assign personnel as agents of Arkansas Tobacco Control to conduct investigations of violations of tobacco laws in this state.

(c) Personnel assigned as agents of Arkansas Tobacco Control shall:

(1) Be considered a law enforcement officer by the Arkansas Commission on Law Enforcement Standards and Training under § 12-9-101 et seq.; and

(2) Have statewide law enforcement authority.

History. Acts 2001, No. 1699, § 1; deleted “Board” following “Tobacco Control.” 2009, No. 785, § 5; 2013, No. 1273, § 1.

Amendments. The 2013 amendment

SUBTITLE 7. CONSUMER PROTECTION**CHAPTER 86****GENERAL PROVISIONS****SECTION.**

4-86-109. Automatic lease agreement renewal — Notice required.

4-86-109. Automatic lease agreement renewal — Notice required.

(a) For purposes of this section, “automatic lease renewal” means a provision in a written lease of personal property that the lease is automatically renewed for an additional term at the end of the initial lease agreement term or at the end of any renewal lease term unless the lessee gives written notice to the lessor not to renew the lease agreement.

(b) Except as provided in subsection (c) of this section, a lessor of personal property under a written lease agreement that contains an automatic lease renewal shall provide to a lessee:

(1) Written notice of the automatic renewal at least thirty (30) days before the date the cancellation of the renewal of the lease agreement is due by the lessee;

(2) The identification of the lessor on communications between the lessee and lessor, including monthly statements;

(3) A copy of the original lease agreement on request; and

(4) The full purchase price, the interest rate for the lease, the monthly payment, and the total payoff amount for the personal property in the written lease agreement.

(c) If the lessor fails to provide the notice and information required under subsection (b) of this section, the automatic lease agreement renewal is voidable at the option of the lessee.

(d) This section does not apply to lease agreements with a term of less than one (1) year.

History. Acts 2013, No. 1320, § 1.

CHAPTER 88**DECEPTIVE TRADE PRACTICES****SUBCHAPTER.**

1. GENERAL PROVISIONS.

9. UNFAIR PRACTICES RELATED TO RESIDENTIAL REAL ESTATE REPAIR CONTRACTS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

4-88-105. Consumer Protection Division.

4-88-101. Applicability of chapter.

CASE NOTES

Practice of Law.

Because a law firm and its attorneys were attorneys engaged in the practice of law at the time of their alleged collection of amounts in excess of those set forth in § 4-60-103 by a holder of a dishonored check, the Arkansas Deceptive Trade Practices Act (ADTPA), §§ 4-88-101 to 4-88-804, had no applicability to their

actions. The law firm was engaged in the practice of law by engaging in settlement negotiations for its clients. *Bennett & Deloney, P.C. v. State Ex Rel. McDaniel*, 2012 Ark. 119, 388 S.W.3d 12 (2012), rehearing denied, *Bennett & Deloney, P.C. v. State*, — S.W.3d —, 2012 Ark. LEXIS 206 (Ark. Apr. 26, 2012).

4-88-105. Consumer Protection Division.

(a) There is created within the office of the Attorney General a Consumer Protection Division.

(b) The director of this division shall be known as the Consumer Counsel of Arkansas and shall be appointed by the Attorney General who may also appoint such assistants, investigators, and professional and clerical staff as are necessary for the efficient operation of the division.

(c) The division shall represent and protect the state, its subdivisions, the legitimate business community, and the general public as consumers.

(d) The division shall have the following functions, powers, and duties:

(1) To serve as a central coordinating agency and clearinghouse for receiving complaints of illegal, fraudulent, or deceptive practices;

(2) To assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;

(3) To conduct investigations, research, studies, and analyses of matters, to issue reports, and take appropriate action affecting the interests of consumers, which may include the referral of complaints to state and local departments or agencies charged with enforcement of consumer laws, or to private organizations and agencies; however, the division may retain jurisdiction over such matters until resolved;

(4) To promote consumer education and to undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, advertisement, and sale of consumer goods and services, encouraging and supporting activities directed toward these objectives by the Better Business Bureau, consumer organizations, and other associations of like nature;

(5) To investigate violations of laws enacted and rules and regulations promulgated for the purpose of consumer protection, and to study the operation of such laws, rules, and regulations and to recommend to the General Assembly needed changes in law in the consumer's interest; and

(6) To enforce the provisions of this chapter and to perform such other functions as may be incidental to the powers and duties set forth in this chapter.

(e) The expenses of the division shall be paid from funds provided for that purpose by law, including without limitation:

(1) Funds made available by the state, a state agency, or a state political subdivision;

(2) Funds made available by the United States Government or a federal agency; or

(3)(A) Funds deposited into a Consumer Education and Enforcement Account, managed by the division, from settlements or judgments in favor of the state related to a lawsuit or assurance of voluntary compliance in which the state was a party.

(B) The Consumer Education and Enforcement Account shall not carry a balance greater than one million dollars (\$1,000,000), and the funds in the account shall be used in a manner determined by the office of the Attorney General, including without limitation:

- (i) Litigation support;
- (ii) Expert witness fees;
- (iii) Court filing fees;
- (iv) Process server fees;
- (v) Witness fees;
- (vi) Court costs;
- (vii) Court reporter fees;
- (viii) Attorney and staff training;
- (ix) Travel expenses;
- (x) Consumer education;
- (xi) Office expenses and improvements; and
- (xii) Investigation expenses.

(f)(1) As used in this section, "state agency" includes without limitation:

- (A) A state agency, office, or department;
- (B) A board or commission; and
- (C) A public college or university.

(2) When a settlement is agreed to or a judgment is entered in a lawsuit in which the state is a party receiving all or part of the settlement or judgment, the Attorney General shall distribute the funds in the following manner:

(A) Restitution to Arkansas consumers or state agencies, or for other purposes, as designated by the court order or settlement agreement;

(B) Designation of cash funds to a state agency having a nexus to the underlying litigation;

(C) Payment of attorney's fees or civil penalties under § 4-88-113(a)(1), § 4-88-113(c), or § 4-88-113(e); or

(D) Payment into the Consumer Education and Enforcement Account, as authorized by § 4-88-105.

(3)(A) Funds to be distributed as described in subdivisions (f)(2)(B)-(D) shall be distributed in the manner prescribed by this section within one hundred twenty (120) days of the receipt of the funds.

(B) Restitution funds shall be distributed to Arkansas consumers as soon as is practicable and in accordance with any applicable court order.

(4)(A) The office of the Attorney General shall on a quarterly basis provide to the Legislative Council or Joint Budget Committee a report of all cash funds received from court orders or settlement agreements.

(B) The report shall include:

(i) The case name of the court order or settlement agreement;

(ii) The amount of funds received by the office of the Attorney General for each court order or settlement agreement; and

(iii)(a) A plan for disbursement of the funds.

(b) If cash funds received from a court order or settlement agreement are expended for any purpose, including consumer education and enforcement activities, the report must itemize specific activities subject to the exclusions provided in §§ 4-88-111 and 25-1-403(1)(B).

(c) The report shall also itemize the specific consumer education and enforcement activities funded for the office of the Attorney General.

(C) If funds received from a court order or settlement agreement are given to a specific entity by the office of Attorney General, the report must include:

(i) If the court order or settlement agreement directed moneys to be given to a specific entity;

(ii) If the court order or settlement agreement directs funds to a specific entity, the office of the Attorney General shall provide a summary of input regarding the drafting of the court order or settlement agreement.

(iii) If the office of the Attorney General receives funds from a court order or settlement agreement that does not require disbursement of funds to a specific entity, the office of the Attorney General shall report a rationale for disbursing funds to a specific entity.

(iv) A report of current balances of all unappropriated cash fund holdings received by court order or settlement agreement by the office of the Attorney General.

(D) The quarterly reports shall be provided no later than the fifteenth day of the month immediately following the end of each quarter.

History. Acts 1971, No. 92, §§ 1, 2, 12; A.S.A. 1947, §§ 70-901, 70-902, 70-912; Acts 1991, No. 1177, § 3; 2013, No. 763, §§ 1, 2.

Amendments. The 2013 amendment rewrote (e); and added (f).

4-88-107. Deceptive and unconscionable trade practices generally.

CASE NOTES

Scope.

In *Preston v. Stoops*, 373 Ark. 591, 285 S.W.3d 606, 2008 Ark. LEXIS 397 (2008), the Arkansas Supreme Court dismissed the client’s claim against the attorney because it found that the Arkansas Deceptive Trade Practices Act (ADTPA), § 4-88-101 et seq., did not apply to the practice of law; the basis for this holding was that the Arkansas General Assembly did not have the authority to create a law that would control the practice of law. However, that same protective rationale did not apply to the creditor here; it was a separate entity apart from the firm it hired to collect the debt, and Preston did not shield it from debtor’s ADTPA cause of action. *Humes v. LVNV Funding, L.L.C.* (In re *Humes*), 468 B.R. 346 (Bankr. E.D. Ark. 2011).

Specific prohibitions enumerated in subdivisions (a)(1)-(9) of this section each involve false representation, fraud, or the improper use of economic leverage in a trade transaction; thus, the catch-all pro-

vision for “any other unconscionable, false, or deceptive act or practice in business, commerce, or trade” in subdivision (a)(10) must be interpreted to reach similar instances of false representation, fraud, or the improper use of economic leverage in a trade transaction. *Universal Coops., Inc. v. AAC Flying Serv.*, 710 F.3d 790 (8th Cir. 2013).

Herbicide distributor’s complaint alleged that the crop dusters applied the herbicide in contravention of the label instructions, during inappropriate weather conditions, and without maintaining required records (but it did not allege that these actions included conduct in the nature of an improper use of economic leverage in a trade transaction); the alleged conduct simply failed to fit within the scope of the unconscionable trade practices prohibited by the Arkansas Deceptive Trade Practices Act. *Universal Coops., Inc. v. AAC Flying Serv.*, 710 F.3d 790 (8th Cir. 2013).

SUBCHAPTER 9 — UNFAIR PRACTICES RELATED TO RESIDENTIAL REAL ESTATE REPAIR CONTRACTS

SECTION.

- 4-88-901. Applicability.
- 4-88-902. Definitions.
- 4-88-903. Notice of cancellation.

SECTION.

- 4-88-904. Commencement of work — Cancellation.
- 4-88-905. Violations.

4-88-901. Applicability.

(a) This subchapter applies to a residential real estate repair contract under which a person has contracted with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy.

(b) The rights and responsibilities contained in this subchapter are in addition to those under §§ 4-89-101 et seq., and 17-25-501.

History. Acts 2013, No. 1360, § 1.

4-88-902. Definitions.

As used in this subchapter:

(1)(A) "Emergency services" means services performed with the express permission of the insured and that are immediately necessary for:

- (i) The preservation of the residential real estate; or
- (ii) The health of the insured, owner, or possessor.

(B) "Emergency services" does not include inspection of the residential real estate or an estimation of the repair costs;

(2) "Insured" means the person whose name appears on the face of the property and casualty insurance policy;

(3) "Residential contractor" means a person or entity in the business of contracting or offering to contract with an insured, owner, or possessor of residential real estate to repair or replace roof systems or perform other exterior repair, replacement, construction, or reconstruction work on residential real estate;

(4) "Residential real estate" means a new or existing dwelling constructed for habitation by one (1) to four (4) families, including a detached garage;

(5) "Residential real estate repair contract" means a written contract with an insured to repair residential real estate and provide goods and services to be paid under a property and casualty insurance policy; and

(6) "Roof system" means roof coverings, roof sheathing, roof weatherproofing, and insulation.

History. Acts 2013, No. 1360, § 1.

4-88-903. Notice of cancellation.

Before signing a residential real estate repair contract with an insured, a residential contractor shall furnish to the insured:

(1) The following statement in at least 10-point boldface type, the following:

"You may cancel this residential real estate repair contract at any time within three (3) business days after you have received written notification from your insurer that all or any part of the claim or residential real estate repair contract is not a covered loss under the insurance policy. See attached notice of cancellation form for an explanation of this right."; and

(2) A fully completed form in duplicate, captioned "NOTICE OF CANCELLATION", that is attached to the residential real estate repair contract for repairs to residential real estate, that is easily detachable, and contains the following in at least 10-point boldface type:

"NOTICE OF CANCELLATION

(Enter date of transaction)

If you are notified by your insurer that all or any part of the claim or residential real estate repair contract is not a covered loss under the insurance policy, you may cancel the residential real estate repair contract by mailing or delivering a signed and dated copy of this

cancellation notice or another written notice to (name of residential contractor) at (address of residential contractor’s place of business) at any time within three (3) business days after you have received such notice from your insurer. If you cancel, any payments made under the residential real estate repair contract except for certain emergency services already performed by the residential contractor will be returned to you within ten (10) business days following receipt by the residential contractor of your cancellation notice.

I CANCEL THIS TRANSACTION

(DATE)

(INSURED’S SIGNATURE).”

History. Acts 2013, No. 1360, § 1.

4-88-904. Commencement of work — Cancellation.

(a) A residential contractor in a residential real estate repair contract with an insured shall not commence work until the insured’s right to cancel under subsection (b) of this section has expired.

(b) A person who has entered into a residential real estate repair contract with a residential contractor may cancel the residential real estate repair contract within three (3) business days after the insured has received written notice from the insurer in response to an insurance claim filed that all or any part of the claim or residential real estate repair contract is not a covered loss under the insurance policy.

(c)(1) The insured cancels the residential real estate repair contract by giving written notice of cancellation to the residential contractor in person or by mailing it to the address stated in the residential real estate repair contract.

(2) If the notice of cancellation is given by mail, it is effective upon deposit of the notice in the United States mail, postage prepaid, and properly addressed to the residential contractor.

(3) The notice of cancellation is not required to be in a particular form and is sufficient if it expresses in writing an intention of the insured not to be bound by the residential real estate repair contract.

(d)(1) Within ten (10) days after cancellation of a residential real estate repair contract, the residential contractor shall tender to the insured any payments, partial payments, or deposits made and any note or other evidence of indebtedness.

(2) If the residential contractor has performed any emergency services, the residential contractor is entitled to the reasonable value of such emergency services.

(e) Any provision in a residential real estate repair contract that requires the payment of a fee for anything except emergency services is not enforceable against the insured that has cancelled a residential real estate repair contract under this section.

History. Acts 2013, No. 1360, § 1.

4-88-905. Violations.

(a) A violation of this subchapter by a residential contractor is an unfair and deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(b) This subchapter does not prohibit an insured that is harmed by a deceptive trade practice from commencing a civil action against a residential contractor.

History. Acts 2013, No. 1360, § 1.

CHAPTER 90 AUTOMOBILES

SUBCHAPTER 2 — ODOMETER REGULATIONS

4-90-204. Preventing tampering.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

4-90-206. Disclosure requirements on transfer of a motor vehicle.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

CHAPTER 106 DISCOUNT CARDS

SUBCHAPTER.

2. HEALTH-RELATED CASH DISCOUNT CARDS.

SUBCHAPTER 2 — HEALTH-RELATED CASH DISCOUNT CARDS

SECTION.

4-106-202. Penalty.

4-106-202. Penalty.

(a) The Attorney General, any person, firm, private corporation, municipal or other public corporation, or trade association may maintain an action to enjoin a continuance of any act or acts in violation of this subchapter and for the recovery of damages.

(b) Any person subject to liability under this section shall be deemed as a matter of law to have purposely availed himself of the privileges of conducting activities within Arkansas sufficient to subject the person to the personal jurisdiction of the circuit court hearing an action brought pursuant to this subchapter.

(c) An action for violation of this section may be brought:

- (1) In the county where the plaintiff resides;
- (2) In the county where the plaintiff conducts business;
- (3) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised, or otherwise distributed; or

(4) In the Pulaski County Circuit Court if the action is initiated by the Attorney General.

(d)(1) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this subchapter, it shall enjoin the defendant from a continuance thereof.

(2) It shall not be necessary, except to recover for actual damages under subdivision (d)(3)(B) of this section, that actual damages to the plaintiff be alleged or proved.

(3) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant:

(A) Whichever is greater:

(i) One hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised, or otherwise distributed within the State of Arkansas; or

(ii) Ten thousand dollars (\$10,000);

(B) Three (3) times the amount of the actual damages, if any, sustained;

(C) Reasonable attorney's fees;

(D) Costs; and

(E) Any other relief which the court deems proper.

(e)(1) All actions under this section shall be commenced within two (2) years after the date on which the violation of this subchapter occurs or within two (2) years after the person bringing the action discovers or in the exercise of reasonable diligence should have discovered the occurrence of the violation of this subchapter.

(2) The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the person bringing the

action proves by a preponderance of the evidence that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(f)(1) Any defendant in an action brought under the provisions of this subchapter may be required to testify under § 16-43-211 and as otherwise provided by law.

(2) In addition, the books and records of the defendant may be brought into court and introduced, by reference, into evidence.

(g) The remedies prescribed in this section are cumulative and in addition to the remedies prescribed in the Deceptive Trade Practices Act, § 4-88-101 et seq., and any other applicable criminal, civil, or administrative penalties.

History. Acts 1999, No. 1406, § 2; substituted "§ 16-43-211 and as otherwise provided by law" for "the provisions of § 16-43-701" in (f)(1).
2005, No. 875, §§ 3, 4; 2013, No. 1148, § 3.

Amendments. The 2013 amendment

CHAPTER 107

CREDIT CARDS

SUBCHAPTER.

3. UNAUTHORIZED USE OF CREDIT CARDS.

SUBCHAPTER 3 — UNAUTHORIZED USE OF CREDIT CARDS

SECTION.

4-107-302. Definitions.

4-107-304. Acceptance of credit card agreement.

SECTION.

4-107-305. Liability.

4-107-306. Amount owed.

4-107-307. Interest rate.

4-107-302. Definitions.

As used in this subchapter:

(1) "Authorized user" means a person granted express, implied, or apparent authority to use a cardholder's credit card or credit card number;

(2) "Cardholder" means the named credit card account member and co-applicant who applies for or accepts the terms and conditions of a credit card account;

(3) "Charges" means purchases, cash advances, annual membership fees, delinquent payment fees, insufficient fund fees, over-the-limit credit fees, or other amounts incurred through the use of the credit card;

(4) "Credit card" means an instrument or device, whether known as a credit card, charge card, credit plate, courtesy card, identification card, or by any other name, that:

(A) Is issued by a credit card issuer with or without a fee;

(B) Has an assigned account number; and

(C) Is for the use of the cardholder to obtain money, goods, services, or anything of monetary value, on credit, in possession, or in consideration of an undertaking or guaranty by the credit card issuer of the payment of a check drawn by the cardholder on a promise to pay, in part or in full, at a future time whether or not any part of the indebtedness that is represented by the promise to make a deferred payment is secured or unsecured;

(5) "Credit card account" means a line of credit offered by a credit card issuer to a cardholder for the use of a credit card;

(6) "Credit card agreement" means the terms and conditions governing the use of the credit card account;

(7) "Credit card issuer" means a person who issues a credit card or the agent of a person with respect to a credit card;

(8) "Creditor" means a person, business, financial institution, or commercial enterprise that owns the credit card account;

(9) "Data" means the information maintained on the cardholder's account by the original creditor, credit card issuer, or succeeding creditor in the regular course of business and transferred as part of an assignment or sales agreement to the present creditor or owner of the account electronically or otherwise from which information the present creditor or owner has compiled;

(10) "Financial institution" means:

(A) A banking institution that may issue credit cards under any state or federal law;

(B) A banking subsidiary owned by a bank holding company as defined in 12 U.S.C. § 1841 or by a savings and loan holding company as defined in 12 U.S.C. § 1467a(a)(1)(D); or

(C) Any federally regulated banking institution;

(11) "Interest" means a payment to compensate a creditor or prospective creditor for making an extension of credit, making available a line of credit, or for a borrower's default or breach of a condition on which credit was extended; and

(12) "Terms and conditions" means the general and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of a credit card agreement between the credit card issuer and the cardholder.

History. Acts 2003, No. 274, § 1; 2013, No. 1495, § 1. rewrote the section catchline and the section.

Amendments. The 2013 amendment

4-107-304. Acceptance of credit card agreement.

The acceptance of the terms and conditions of a credit card account by a cardholder may be established as binding and enforceable by:

(1) The written or electronic signature or other electronic record of acceptance by the cardholder; or

(2) The use of the credit card account by the named credit card account member, any coapplicant, or any authorized user if the credit

card agreement provides that any use of the credit card account constitutes an acceptance of the terms and conditions of the credit card agreement if the time prescribed in 12 C.F.R. § 202.12(b) has expired.

History. Acts 2013, No. 1495, § 2.

4-107-305. Liability.

(a) A cardholder is personally liable for charges and interest incurred by the named credit card account member, any coapplicant, or any authorized user on the credit card account of the cardholder.

(b) A cardholder is not liable for charges and interest incurred on the credit card account as a result of fraudulent activity by another person.

History. Acts 2013, No. 1495, § 2.

4-107-306. Amount owed.

(a) A creditor may establish a presumption of correctness of its ownership of the credit card account and the amount of the charges and interest that is owed on a credit card account by:

(1) Filing a copy of the credit card issuer's final billing statement or charge-off statement; or

(2) Filing a compilation of the data maintained by the original creditor, credit card issuer, or succeeding creditor in the regular course of business.

(b) The cardholder may dispute the presumption with any credible evidence as allowed by state or federal law.

History. Acts 2013, No. 1495, § 2.

4-107-307. Interest rate.

A creditor may establish the contracted interest rate for a credit card account by:

(1) Documenting the acceptance of the terms and conditions that contain a stated or variable interest rate by a cardholder of the credit card account; or

(2) Any billing statement generated by the credit card issuer that contains a stated or variable interest rate.

History. Acts 2013, No. 1495, § 2.

